



I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: May 21, 2004

Signature: \_\_\_\_\_

*Brenda Campbell*  
(Brenda Campbell)

Docket No.: 300622000123  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Chaitan KHOSLA et al.

Application No.: 09/925,236

Filed: August 8, 2001

For: RECOMBINANT PRODUCTION OF NOVEL  
POLYKETIDES

Art Unit: 1652

Examiner: N. Nashed

**RESPONSE TO RESTRICTION REQUIREMENT**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This is in response to an Office Action mailed 24 February 2004, time for response to which was set to expire 24 March 2004. Accordingly, a petition for a two (2) month extension of time is included herewith, extending the time for response to 24 May 2004. In addition, authorization to charge the required fee is given. However, since the necessity for a two-month extension is due to a mistake on the part of the U.S. Patent and Trademark Office (PTO), Applicants believe that the extension fee should be forgiven, as explained below.

Restriction was required in the written Office Action; however, the claims restricted, claims 1-95, were actually canceled in a Preliminary Amendment submitted along with the

application. In that Preliminary Amendment, claims 96-115 were proposed to be added. The Examiner is now in possession of these claims, as Applicants have faxed these claims to his attention.

In a telephone conversation with the undersigned, Examiner Nashed indicated that the new claims, claims 96-115, would be restricted among three groups:

Group I, claims 96-103 directed to a method to prepare a cell containing a nucleic acid molecule;

Group II, claims 104-106 directed to a method to produce a functional polyketide synthase by culturing the resulting cell; and

Group III, claims 107-115 directed to a method to produce a polyketide, also by culturing the cells resulting from the method of Group I.

Applicants hereby elect to prosecute the invention of Group I (claims 96-103), without traverse. In addition, Applicants request that claims 102 and 103 be canceled. Applicants also request that claims 104-115 be withdrawn from consideration but not canceled.

Applicants expressly reserve the right under 35 U.S.C. § 121 to file a divisional application directed to the non-elected subject matter during the pendency of this application, or an application claiming priority from this application.

With regard to the fee for the two-month extension, Applicants, in reviewing the status of this application on the PAIR system, on 23 March 2004, discovered that a Restriction Requirement had been mailed. Further, Applicants saw that a correspondence address change had been filed with the PTO. Applicants have no knowledge of this "address change" and it appears that the address was actually changed in error. Therefore, Applicants did not receive the written Restriction

Requirement until 31 March 2004. In view of the PTO having erroneously mailed the Restriction Requirement to another firm, and in view of the late receipt of this Office Action, Applicants believe that the extension fee should be waived.

Examination on the merits is now requested.

If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket No. 300622000123.

Dated: May 21, 2004

Respectfully submitted,

By Brenda J. Wallach  
Brenda J. Wallach  
Registration No.: 45,193  
MORRISON & FOERSTER LLP  
3811 Valley Centre Drive, Suite 500  
San Diego, California 92130  
(858) 720-7961